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VOLUME 1

CASES AND MATERIALS ON REMEDIES

prepared by

S.M. WADDAMS

[based on an earlier edition by R.J. Sharpe]

1984/85

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INTRODUCTION

This course explores the middle ground between procedure, on the one hand, and substantive law, on the other. If we take procedure to refer to society's mechanisms for the resolution of disputes, ultimately the mechanics of litigation, and substantive law to be the definition of rights between individuals in their relations with each other and the state, then remedial law refers to the techniques available for the translation of substantive rights into concrete or practical terms.

Remedial choices may be roughly classified as being constitutive, substitutionary, or specific.

A constitutive remedy is one which itself declares a certain state of affairs or status. It requires no further implementation: the very fact of the judgment itself produces the desired remedy. An example is a decree of divorce.

The usual remedy in our tradition is substitutionary: damages. The object of an award of damages is to put the party complaining, so far as it can be done by money, in the position he would have occupied if the wrong had not been done.

In certain circumstances, generally where damages are an inadequate remedy, specific relief is available. A specific remedy is one that gives the plaintiff the very thing he bargained for, restores property or rights to the state existing before the defendant's wrongful invasion, or protects the plaintiff's position from threatened harm.

Before the Judicature Act, damages were awarded by the courts of law, and specific remedies by the court of equity. A hundred years later a full integration between the two sets of remedies is still to be achieved.

REMEDIES

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